



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

LESLIE TUCKER,
Plaintiff,

vs.

ROBERT B. PRICE,
Defendant.

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Civil Action No.: 4:22-1861-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING DEFENDANT'S MOTION TO DISMISS,
AND DISMISSING ACTION WITHOUT PREJUDICE**

Plaintiff Leslie Tucker (Tucker), proceeding pro se, filed a complaint and an amended complaint against Defendants Robert B. Price (Price), Caroline Lawson (Lawson), and Belinda Timmons (Timmons), alleging claims under 42 U.S.C. § 1983. The United States Magistrate Judge consolidated the two complaints and the Court previously dismissed Lawson and Timmons.

This matter is before the Court for review of the Report and Recommendation (Report) of the Magistrate Judge recommending the Court grant, under Federal Rule of Civil Procedure 12(b)(6), Price's motion to dismiss or, in the alternative, motion for summary judgment, and dismiss this case without prejudice. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court

may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 21, 2023. The Clerk's Office docketed Tucker's objections on October 4, 2023. Price failed to reply. Because the Court determines that the objections lack merit, it will overrule them and enter judgment accordingly.

First, Tucker appears to argue a favorable outcome in his state court case is unrequired to pursue a malicious prosecution claim under Section 1983, citing *Boyce v. Woodruff*, 979 F. Supp. 817 (N.D. Ind. 1997).

Boyce, decided by a district court in another state, is nonbinding on this Court. The Court must follow Fourth Circuit precedent, which, as the Magistrate Judge explained, requires a favorable outcome before bringing a Section 1983 malicious prosecution claim. *See Durham v. Horner*, 690 F.3d 183, 188 (4th Cir. 2012) (a malicious prosecution claim under Section 1983 requires "that the criminal proceedings have terminated in plaintiff's favor." (quoting *Burrell v. Virginia*, 395 F.3d 508, 514 (4th Cir. 2005))).

Tucker's state court proceedings remain pending, and thus no outcome, favorable or otherwise, has occurred. Accordingly, Tucker's malicious prosecution claim is premature and the Court will overrule Tucker's objection.

Second, Tucker appears to contend his state court criminal proceedings have been unlawfully delayed. He failed, however, to argue any delay is attributable to Price. The Court shall thus overrule this objection, as well.

Finally, Tucker's remaining objections fail to dispute the dispositive determinations from the Report. Instead, they focus on the validity of his arrest. As explained above and in the Report, the Court is unable to reach that issue at this time. Thus, the Court need not discuss these remaining

objections. Nevertheless, out of an abundance of caution, the Court has reviewed the Report and the record de novo and found no error. It will thus overrule each of Tucker's remaining objections, too.

After a thorough review of the Report and the record in this case under the standard set forth above, the Court overrules the objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court Price's motion to dismiss is **GRANTED** and this action is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Signed this 27th day of October 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.